

AFFIDAVIT OF WITNESSES

The following witnesses, each being severally, duly, and respectively sworn, depose and say:

My name is Florence Wong I reside at 709 East 9 St.
(Number and street)

NY NY, and
(City or town) (State)

My name is Doris Pong I reside at 705 East 9 St.
(Number and street)

NY NY
(City or town) (State)

I personally know the petitioner named in this petition for naturalization, of which this affidavit is a part, to be a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, and that he is now and has been for at least 90 days actively serving honorably in the Armed Forces of the United States.

I do swear (affirm) that the statements of fact I have made in this affidavit of this petition for naturalization subscribed by me are true to the best of my knowledge and belief: SO HELP ME GOD.

Sgd. FLORENCE WONG
(Signature of witness)

Sgd. DORIS PONG
(Signature of witness)

WHEN OATH ADMINISTERED BY CLERK OR DEPUTY
CLERK OF COURT

Subscribed and sworn to before me by the above-named petitioner and witnesses in the respective forms of oath shown in said petition and affidavit in the office of the Clerk of said Court at New York, New York this 22 day of December, A. D. 1955

WILLIAM V. CONNELL,
Clerk.

By Sgd. Wm. C. MULLER,
Deputy Clerk.

[SEAL]

OATH OF ALLEGIANCE

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and the laws of the United States of America against all enemies, foreign and domestic;

renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and the laws of the United States of America against all enemies, foreign and domestic;

that I will bear true faith and allegiance to the same;

that I will bear arms on behalf of the United States when required by law; or

that I will perform noncombatant service in the Armed Forces of the United States when required by the law; or

that I will perform work of national importance under civilian direction when required by the law;

and that I take this obligation freely without any mental reservation or purpose of evasion: So HELP ME GOD. In acknowledgment whereof I have hereunto affixed my signature.

Sgd. TAK SHAN FONG
(Signature of petitioner)

Sworn to in open court, this JUL 23 1956

HERBERT A. CHARLSON,
Clerk.

By Sgd. J. E. HAMER,
Deputy Clerk.

findings of facts

*See Opinion by Judge
Murphy dated 6/22/56 at-
tached.*

NOTE.—In renunciation of title or order of nobility, add the following to the oath of allegiance before it is signed: "I further renounce the title of (give title or titles) which I have heretofore held." or "I further renounce the order of nobility (give the order of nobility) to which I have heretofore belonged."

Petition granted: Line No. 1 of List No. 20722 and Certificate No. 7616112 issued.

Petition denied: List No.

Dec. res. #20586 4/16/56

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SUPREME COURT. U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 110

TAK SHAN FONG, PETITIONER,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 16, 1958
CERTIORARI GRANTED OCTOBER 13, 1958

[fol. 4]

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

Petition No. 669690

Petition for naturalization

of

TAK SHAN FONG

FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING
PETITION FOR NATURALIZATION—June 22, 1956

I hereby make the following findings of fact and conclusions of law:

FINDINGS OF FACT:

- (a) Petitioner is an alien who filed his petition for naturalization on December 22, 1955, under P. L. 86, 83rd Congress, approved on June 30, 1953;
- (b) Petitioner did serve on an active duty status in the Armed Forces of the United States and was honorably released therefrom; and
- (c) Petitioner has been lawfully admitted to the United States, to wit, at the Port of Honolulu, T. H., on August 24, 1951.

[fol. 5] CONCLUSION OF LAW:

- (a) That the petition for naturalization should be granted.

Thos. F. Murphy, U.S.D.J.

Dated, New York, N. Y., June 22, 1956.

IN UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

Order No. 20722

ORDER OF COURT DENYING PETITIONS
FOR NATURALIZATION—July 23, 1956

United States of America
Southern District of New York—ss:

Upon consideration of the petitions for naturalization recommended to be denied, listed on List 20722 sheet 1 dated July 23, 1956, presented in open Court on the 16th day of April, A. D., 1956, it is hereby ordered that each of the said petitions, except those petitions listed below, be, and hereby is, denied. Decision reserved by Judge Thomas F. Murphy.

[fol. 6] It is further ordered that the recommendation of the designated examiner is disapproved as to the persons listed below, and each of said petitioners so listed having appeared in person in open Court the day of, 19.....; and each having taken the oath of allegiance required by the naturalization laws and regulations, it is hereby ordered that each of them be, and hereby admitted to become a citizen of the United States of America. See Findings of Fact, Conclusions of Law by Judge Murphy, dated June 22, 1956, directing granting of petition after final hearings.

It is further ordered that prayers for change of name listed below be and hereby are granted, except petition(s) No.

Petition

<i>No.</i>	<i>Name of Petitioner</i>	<i>Change of Name</i>
669690	Tak Shan Fong	Formal objection taken and exception noted.

It is further ordered that petitions listed below be continued for the reasons stated.

By the Court, this 23rd day of July, 1956.

Thos. F. Murphy, U. S. D. Judge.

There appears to be no exceptions to the express requirements laid down by Congress, that a petitioner under this Act either be lawfully admitted into the United States for permanent residence or be lawfully admitted into United States for some other admissible purpose. House Report No. 223 (1953) submitted with the bill which became Public Law 86, states, "It contemplated benefits only for the alien who has effected lawful entry, either in an immigrant or non-immigrant status." And as this Court said in *In re Apolonia* [sic], 128 F. Supp. 288., "The situation might be quite different in the case of a seaman who 'jumped ship' and never acquired any legal right to admittance." Countless seaman [sic] have been lawfully admitted to the United States in pursuit of their calling. This is in recognition of the physical requirements of maritime commerce. In the instant case, however, petitioner, in plain disregard, if not defiance, of the immigration order made pursuant to law and regulations, to remain on board, deserted and escaped from the vessel.

3. In accordance with the authority contained in Section 335 of the Immigration and Nationality Act, I hereby make the following findings of fact and conclusions of law:

FINDINGS OF FACT:

- (a) That petitioner is an alien, who filed his petition for naturalization on December 22, 1955 under P. L. 86, 83rd Congress, approved on June 30, 1953[.]

[fol. 12] (b) That petitioner did serve on an active duty status in the Armed Forces of the United States and was honorably released therefrom, and

- (c) That petitioner has not been lawfully admitted to the United States at any time.

CONCLUSION OF LAW:

That the petitioner may not be granted naturalization or be naturalized under the provisions of the Act approved June 30, 1953, Public Law 86, 83rd Cong [.,]; 67 Stat. 108; 8 U. S. C. 1440(a).

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 110

TAK SHAN FONG, PETITIONER,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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4. I recommend that this petition for naturalization be denied on the ground that the petitioner has failed to establish lawful admission to the United States as required by law.

Respectfully submitted,

JAMES P. DILLON
Designated Naturalization Examiner

Date
Jan 4 1956

IN UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

EXHIBIT 2

Certificate of arrival of alien seaman or airman.

(PHOTOPRINT)

*[For convenience of Court and Counsel this Exhibit is
bound in on the opposite page.]*

[fol. 7]

IN UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

Civ. No. 112-366

In the Matter of the Petition for Naturalization of
TAK SHAN FONG
(Petition No. 669690, S. D. N. Y.)

UNITED STATES OF AMERICA, Appellant,

v.

TAK SHAN FONG, Appellee.

NOTICE OF APPEAL—Filed September 6, 1956

Sirs:

Please take notice that the United States of America hereby appeals to the United States Court of Appeals for the Second Circuit from the decision, order, decree and judgment of this Court, dated June 22, 1956, wherein and whereby the petition for naturalization of the above-named petitioner, Tak Shan Fong, for naturalization as a citizen of the United States, was granted over the objections of the Immigration and Naturalization Service, and from [fol. 8] each and every part of said decision, order, decree and judgment.

Dated: New York, N. Y., September 6, 1956.

Yours, etc.,

Paul W. Williams, United States Attorney for the
Southern District of New York, Attorney for
Appellant, Office and P. O. Address: United States
Court House, Foley Square, New York 7, N. Y.

To: Jerome J. Coin, Esq., Attorney for Appellee, 33 West 42nd Street, New York 36, N. Y.

Hon. Herbert A. Charlson, Clerk, United States District Court, Southern District of New York, United States Court House, Foley Square, New York 7, N. Y.

[fol: 9]

EXHIBIT 1

IN THE DISTRICT COURT OF THE
UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

PETITION No. 669690

PETITION FOR NATURALIZATION

of

TAK SHAN FONG.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
RECOMMENDATION OF DESIGNATION [SIC]
NATURALIZATION EXAMINER

*To the Honorable, the Judges of the United States District
Court for the Southern District of New York:*

1. The undersigned, duly designated under the Immigration and Nationality Act to conduct preliminary examinations upon petitions for naturalization, respectfully presents: The petitioner, a 26 year old single male, native and citizen of China, arrived aboard the S/S "OCEAN STAR" at Newport News on January 27, 1952 in the capacity of cabin-boy crewman. On inspection by the Immigration Service, he was ordered detained on board, proper notice being served on the Master, as a person inadmissible as a bona fide seaman. Official records show that he deserted the vessel and escaped.

[fol. A]

[File endorsement omitted]

[fol. 1]

**IN UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

OCTOBER TERM, 1957

Docket No. 24420

[Appeal Filed Under District Court Docket No. 112-366,
S. D. N. Y.]

In the Matter of the Application of
TAK SHAN FONG, Petitioner,
Petition No. 669690.

UNITED STATES OF AMERICA, Respondent-Appellant,

v.

TAK SHAN FONG, Petitioner-Appellee.

STATEMENT UNDER RULE 15(b)

A Petition for Naturalization as a United States citizen was filed by Tak Shan Fong in the District Court for the Southern District of New York on December 22, 1955. Following the filing of the Findings, Conclusions and Recommendation of the Designated Naturalization Examiner recommending denial of the Petition, and after a hearing without testimony before the District Court, [fol. 2] Judge Murphy filed Findings of Fact and Conclusions of Law on June 22, 1956, granting the Petition for Naturalization and admitting Tak Shan Fong to citizenship. The formal order was filed on July 23, 1956. Notice of Appeal was filed on September 6, 1956 under Civil Docket No. 112-366 after the filing of an order of the District Court extending the time of the Government to

(page 11)

CERTIFICATE OF ARRIVAL OF ALIEN SEAMAN OR AIRMAN

NY File Unknown

U. S. DISTRICT COURT
SO. DIST. of N. Y.

District Director
New York, N. Y.

Port of **Norfolk, Va.**

Date **June 10, 1952**

EXHIBIT #1

I HEREBY CERTIFY that the following is a correct record and statement of facts relative to the **APR 16 1952** arrival in the United States of the alien named below:

- (1) Crew-list sheet No. **2** Line No. **21** No. airman's license
- (2) Crew-list visaed: **By Am. Consul, Colombo, Ceylon, Dec. 10, 1951.**
- (3) Nationality and name of vessel or aircraft No. **Pan. SS "OCEAN STAR"** Line: **-**
- (4) Port at which arrived: **Newport News, Va.** Date: **Jan. 27, 1952**
- (5) Vessel or aircraft arrived from: **Vinagapatam, India** Left that port on: **-**
- (6) Name: **Tak Shan Fung** Age: **22** Sex: **Male**
- (7) Nationality: **China** Race: **China** Able to read: **No**
- (8) State whether member of crew last preceding voyage of vessel to U. S.: **Yes**
- (9) Position in vessel's company or on aircraft: **Pantry Boy** Length of service at sea or in air: **1 Yr.**
- (10) Shipped or engaged—When: **April 27, 1951** Where: **Hong Kong**
- (11) Whether to be paid off or discharged at port of arrival: **No**

or on aircraft: **Pantry boy**

at sea or in air: **- - -**

- (10) Shipped or engaged—When: **April 27, 1951** Where: **Hong Kong**
- (11) Whether to be paid off or discharged at port of arrival: **No**
- (12) Height: **5' 8"** Weight: **135**
- (13) Physical marks, peculiarities, or disease: **-**
- (14) Head tax paid: **No**
- (15) Record of any legal admission for permanent residence: **No**

(16) Admitted under Sec. **Act** for period of

(17) Examined by Inspector: **Douglas**

(18) Reported on Form I-489 (old 689) dated **Norfolk, Va., as Fung Tak Shan**

Deserting Seaman:

Deserting Seaman:

(19) Remarks: **Alien ordered detained on board account not in possession of proper travel document. Escaped; fine proceedings instituted.**

EX 71 ✓

DANIEL R. MORGAN
Officer in Charge, Norfolk, Va.

(Official title)

THIS FORM IS INSUFFICIENT AS A BASIS FOR A PETITION

FOR A PETITION FOR NATURALIZATION

Exhibit 2

On February 8, 1952, petitioner got a job as dishwasher in a New York City restaurant. On June 8, 1952 he was [fol. 10] apprehended, accorded a hearing in deportation proceedings, he testified he did not see any immigration officers aboard the vessel at any time when he arrived. He next stated that he left the vessel two days after he arrived and did not obtain permission to leave. He later stated that he asked an officer of the vessel and was given permission to leave and he left the ship at 8.00 P. M., going to New York to visit friends and after four days returned to find the vessel gone.

Exhausting his administrative remedies, petitioner was ordered deported by warrant dated, January 15, 1954. Delivery bond was cancelled upon this Service learning petitioner had been inducted into the Army on May 4, 1953. Thereafter petitioner served in an active duty status until May 3, 1955, being released, honorably. He did not serve overseas.

The question presented is whether petitioner has established the essential statutory allegation #7 in his petition, to wit, that he was lawfully admitted into the United States as required by the law.

2. P. L. 86, 83rd Cong., 67 Stat. 108; 8 U. S. C. 1440(a) approved June 30, 1953 under which this serviceman filed his petition for naturalization provides in material part as follows:

"... any person, not a citizen, who, after June 24, 1950, and not later than July 1, 1955, has served, honorably, in the Armed Forces of the United States for a period or periods totaling not less than ninety days and who (1) having been lawfully admitted to the United States for permanent resident, or (2) having been lawfully admitted to the United States, [fol. 11] and having been physically present within the United States for a single period of at least one year at the time of entering the Armed Forces, may be naturalized on petition filed not later than December 31, 1955. . . ."

file its appeal from the order admitting appellee to citizenship.

Appellee is represented by Jerome J. Coin, Esq. The Appellant, United States of America, is represented by Paul W. Williams, United States Attorney.

IN UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

Appendix to Appellant's Brief—Filed November 20, 1957

PETITION FOR NATURALIZATION
(PHOTOPRINTS)

*[For convenience of Court and Counsel this Document is
bound in on the opposite page.]*

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

ORIGINAL

(To be retained
by Clerk of Court)No FEE
lpw

PETITION FOR NATURALIZATION

No. 669690

(Under act of June 30, 1953, P. L. 86, 83d Congress, by a
member or former member of the Armed Forces)*To the Honorable the US DISTRICT Court of SOUTHERN
DISTRICT at New York, New York**This petition for naturalization, hereby made and filed,
respectfully shows:*(1) My full true and correct name is **TAK SHAN FONG**(Do not abbreviate. Show also any
other name which has been used)(2) My present place of residence is **705 East 9 St.,**

(Number and street)

New York, NY NY

(City or town) (State or country)

(3) I was born on **March 29, 1929** in **Tientsin, China**

(Month) (Day) (Year) (City or town) (Country)

(4) My personal description is as follows: Sex **Male**, com-
plexion **yellow**, color of eyes **Brown**, color of hair **Black**,
height **5 feet 8 inches**, weight **132 pounds**, visible distinctive
marks **None**; country of which I am a citizen, subject, or
national **China**(5) I am **not** married; the name of my wife or husband
is(6) I have **no** children; and the name, sex, place and date
of birth, and present place of residence of each of said chil-
dren who is living, are as follows:

NAME	SEX	PLACE BORN	DATE BORN	NOW LIVING AT-
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dren who is living, are as follows:

NAME	SEX	PLACE BORN	DATE BORN	NOW LIVING AT-
.....
.....
.....
.....

(7) I was lawfully admitted to the United States at
Newport News, Virginia under the name of **Tak Shan Fong**

(City or town) (State)

on **January 27, 1952** on the **SS Ocean Star**

(Month) (Day) (Year) (Name of vessel or other means of conveyance)

(8) I actively served honorably in US Army under Service

(Name of branch of service)

No. **US 51239856** from **May 4, 1953** to **May 3, 1955**, I was
physically present in the United States for a single period
or at least 1 year at the time of entering such service.

(9) I desire to have my name changed to

(10) It is my intention in good faith to become a citizen of
the United States and to renounce absolutely and entirely
all allegiance and fidelity to any foreign prince, potentate,
state, or sovereignty of whom or which at this time I am
a subject or citizen. (11) It is my intention to reside perma-
nently in the United States. (12) I am not and have not
been for a period of at least 10 years immediately preceding
the date of this petition a member of or affiliated with any
organization proscribed by the Immigration and Nationality
Act or any section, subsidiary, branch affiliate, or subdivi-
sion thereof nor have I during such period engaged in or
performed any of the acts or activities prohibited by that
Act. (13) I am able to read, write, and speak the English
language (unless exempted therefrom). (14) I am, and
have been during all the periods required by law, a person
of good moral character, attached to the principles of the
Constitution of the United States, and well disposed to the
good order and happiness of the United States. I am will-
ing, if required by law, to bear arms on behalf of the United
States, or to perform noncombatant service in the Armed

organization proscribed by the Immigration and Nationality
Act or any section, subsidiary, branch affiliate, or subdivi-
sion thereof nor have I during such period engaged in or
performed any of the acts or activities prohibited by that
Act. (13) I am able to read, write, and speak the English
language (unless exempted therefrom). (14) I am, and
have been during all the periods required by law, a person
of good moral character, attached to the principles of the
Constitution of the United States, and well disposed to the
good order and happiness of the United States. I am will-
ing, if required by law, to bear arms on behalf of the United
States, or to perform noncombatant service in the Armed
Forces of the United States, or to perform work of national
importance under civilian direction (unless exempted there-
from).

(15) Attached hereto and made a part of this, my petition
for naturalization, are the affidavits of at least two verify-
ing witnesses required by law.I, aforesaid petitioner, do swear (affirm) that I know the
contents of this petition for naturalization subscribed by
me, that the same are true to the best of my knowledge and
belief, and that this petition is signed by me with my full,
true name: **So HELP ME GOD.**Alien Registration No. **A 10 195 771**Sgd. **TAK SHAN FONG**(Full, true, and correct signature of petitioner,
without abbreviation)

CERTIFICATE OF EXAMINATION

I CERTIFY that the petitioner and witnesses named herein
appeared before me and were examined by me prior to the
filing of this petition.Sgd. **N. GEO. PAPADIMAS***U. S. Naturalization Examiner.*

[fol. 14]

IN UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 209-210—October Term, 1957.

Argued March 6, 1958

Docket Nos. 24883 and 24420

UNITED STATES OF AMERICA, Respondent-Appellant,

v.

CHAN CHICK SHICK, also known as CHON CHICH SHICK,
Petitioner-Appellee.

UNITED STATES OF AMERICA, Respondent-Appellant,

v.

TAK SHAN FONG, Petitioner-Appellee.

Before: Lumbard, Waterman and Moore, Circuit Judges.

Appeals from orders of the District Court granting petitions for naturalization under 8 U. S. C. A. §1440(a). [fol. 15] Judge Richard H. Levet, Southern District of New York, granted the petition of Chan Chick Shick. Judge Thomas F. Murphy, Southern District of New York, granted the petition of Tak Shan Fong. Reversed. Motion for *en banc* hearing denied.

Roy Babitt, Special Assistant United States Attorney, Southern District of New York, New York, N. Y. (Paul W. Williams, United States Attorney, Southern District of New York, New York, N. Y. on the brief), for respondent-appellant.

Abraham Lebenkoff, New York, N. Y. (Jerome J. Coin, New York, N. Y., on the brief), for petitioner-appellee Tak Shan Fong.

PER CURIAM OPINION—March 20, 1958

The appeals in these two cases were heard together as each case presented the same question of law.

Chan Chick Shick, a native and citizen of China, entered the United States at New York City on March 14, 1951 as a member of the crew of the S. S. Oriental Dragon. He was admitted to shore leave on a 29 day pass but remained longer than that period. On February 4, 1952 Chan Chick Shick was deported. He returned to the United States as a seaman on the S. S. Henry Jocelyn on April 1, 1952 and thereafter jumped ship, entered the United States unlawfully and remained in this country until May 4, 1953 when he was inducted into the United States Army. He served in the continental United States and was discharged on May 3, 1955. On August 17, 1955 Chan Chick Shick filed a petition for naturalization which was opposed by the government [fol. 16] on the ground that 8 U. S. C. A. §1440(a)¹ required that the single period of physical presence of at least one year within the United States must commence immediately upon and be a result of the lawful admission. Judge Levet in an opinion dated June 21, 1956, reported at 142 F. Supp. 410 (S. D. N. Y. 1956) rejected this interpretation and granted the petition.

The same objections were raised by the government to the petition of Tak Shan Fong, which was granted without opinion by Judge Murphy, Southern District of New York, by order dated July 23, 1956.

Tak Shan Fong, also a citizen and native of China, had legally entered the United States on April 24, 1951. He

¹ 8 U. S. C. A. §1440(a):

“Notwithstanding the provisions of sections 1421(d) and 1429 of this title, any person, not a citizen, who, after June 24, 1950, and not later than July 1, 1955, has actively served or actively serves, honorably, in the Armed Forces of the United States for a period or periods totaling not less than ninety days and who (1) having been lawfully admitted to the United States for permanent residence, or (2) having been lawfully admitted to the United States, and having been physically present within the United States for a single period of at least one year at the time of entering the Armed Forces, may be naturalized on petition filed not later than December 31, 1955, upon compliance with all the requirements of this chapter • • •”

departed and on January 27, 1952 he returned to the United States at Newport News, Virginia, as a cabin boy on the S. S. Ocean Star but he was detained aboard ship as a *mala fide* seaman. He escaped from the ship and entered the country illegally, remaining at large for some four months until he was apprehended on June 8, 1952. Deportation proceedings were thereupon instituted and a warrant of deportation was issued, but these proceedings were abated by the induction of the petitioner into the United States Army on May 4, 1953. All his service with the Army took place in the continental United States. [fol. 17] After his discharge from the Army on May 3, 1955, he filed his petition for naturalization on December 22, 1955.

We have recently passed upon the question presented here in *United States v. Boubaris*, 244 F. 2d 98 (2 Cir. 1957) filed subsequent to both of the orders here in question, wherein we held that §1440(a) of 8 U. S. C. A. required that the "single period of at least one year" be immediately consecutive to the lawful admission required by that section. This continuity is concededly lacking in both of the present cases.

The orders appealed from are reversed and remanded with directions to dismiss the petitions.

The panel requesting consideration of these two cases by the entire court, the entire court on the authority of *United States v. Boubaris*, *supra*, unanimously declines such consideration. Chief Judge Clark, however, wishes to be noted as concurring with the views expressed in the dissenting opinion of Judge Hincks in that case, at 244 F. 2d 98, 100.

[fol. 18]

IN UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Present: Hon. J. Edward Lumbard, Hon. Sterry R.
Waterman, Hon. Leonard P. Moore, Circuit Judges.

UNITED STATES OF AMERICA, Plaintiff-Appellant,

v.

TAK SHAN FONG, Defendant-Appellee.

Appeal from the United States District Court for the
Southern District of New York

JUDGMENT—March 20, 1958

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is reversed and action remanded with directions to dismiss the petition in accordance with the opinion of this court.

A. Daniel Fusaro, Clerk.

[fol. 20] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 21]

SUPREME COURT OF THE UNITED STATES

No. 110, October Term, 1958

TAK SHAN FONG, Petitioner,

VS.

UNITED STATES OF AMERICA.

ORDER ALLOWING CERTIORARI—October 13, 1958

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.